

US DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Paul R. F. Schumacher,
v.
Capital Advance Solutions LLC
Charles Betta
Dan Logan,
Plaintiff.
Defendants.

Case No. 4:18-CV-00436

PLAINTIFF'S MOTION FOR ALTERNATE SERVICE

I. Introduction

Defendant Dan Logan has refused to waive service when requested and has taken steps to avoid service. Accordingly, Plaintiff requests Alternate Service for this defendant.

II. Issues to Be Ruled Upon

To require Christopher D. Devanny to convey the documents to his client Dan Logan and to consider the Dan Logan sufficiently served with the complaint, citation, and initial order.

Mr. Devanny is currently representing Defendant Dan Logan in a similar federal case. Mr. Devanny was sent copies of the initial filing, initial order, and citation with the waiver of service requests. The court is requested to order Mr. Devanny to convey those documents to his client and to consider Mr. Logan served in this manner.

To allow Alternate Service upon Dan Logan via certified mail

Per Federal rule 4(e), service may be done "following state law for serving a summons in

1 an action brought in courts of general jurisdiction in the state where the district court
2 is located or where service is made". Texas rules of civil procedure 106 allows alternate
3 service to be done "in any other manner that the affidavit or other evidence before the
4 court shows will be reasonably effective to give the defendant notice of the suit." [1]

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6 **III. Argument**

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8 **A. Reasonable Attempts Made**

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10 As noted in the attached affidavits of non-service, service has been attempted multiple
11 times on Defendant Dan Logan. Service has been attempted at the address of the business
12 as well as at his home.

13 In addition, as noted in the second affidavit of non-service, Defendant Logan is aware
14 that service is being attempted and is avoiding it in violation of the spirit of the rules of
15 this court to not unnecessarily increase the costs of service.

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17 **B. Governing Rules**

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19 Per Federal rule 4(e), service may be done "following state law for serving a summons
20 in an action brought in courts of general jurisdiction in the state where the district court
21 is located or where service is made".

22 Texas rules of civil procedure 106(a)2 allows defendants to be served by "mailing to
23 the defendant by registered or certified mail, return receipt requested, a true copy of the
24 citation with a copy of the petition attached thereto."

25 Texas rules of civil procedure 106(b)2 allows alternate service to be done "in any other
26 manner that the affidavit or other evidence before the court shows will be reasonably
27 effective to give the defendant notice of the suit." [1]

28

1 **C. Served Through Existing Attorney**

3 Christopher D. Devanny currently represents Dan Logan in CUNNINGHAM v. CAPI-
4 TAL ADVANCE SOLUTIONS, LLC et al (case 3:17-cv-13050) in the New Jersey District
5 Court.

6 Mr. Devanny was sent copies of the waiver requests which were accompanied by the
7 Initial Order, Complaint, and Summons on or around 23-FEB-2018.

8 It is reasonable to expect that Mr. Devanny is in current communication with his client
9 and is capable of conveying those documents to his client in a timely and reliable fashion.
10 It is, in fact, reasonable to expect that Mr. Devanny has already done so.

11 As above, the Texas rules of civil procedure allow alternate service be done in a way
12 which will be reasonably effective to give defendant notice of the suit.

13 Plaintiff contends a court order to Mr. Devanny to ensure that he has indeed conveyed
14 those documents to Mr. Logan this will be reasonably effective in ensuring notice as
15 required by TRCP 106(b)2.

16

17 **D. Alternate Service**

19 If the above method is not approved, Plaintiff requests that the court authorize alternate
20 service via certified mail to Mr. Logan's home address at 550 Cumberland St., Apt. 2,
21 Westfield, NJ 07090.

22 This method is explicitly allowed under Tex. R. Civ. Proc. Rule 106 for service in
23 Texas, and as noted Federal rule 4(e) allows service to be done "following state law" in the
24 jurisdiction where the district court is located.

25 Additionally, it fulfills the more general requirement that alternate service be done in
26 a manner that will be reasonably effective to give notice.

1 **IV. Conclusion**

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3 In conclusion, reasonable attempts to serve Mr. Logan in person have failed, in part
4 due to his efforts to avoid being served. Plaintiff requests that either Mr. Logan's current
5 attorney in the concurrent action be ordered to convey the documents to him or that
6 Plaintiff be allowed to serve Mr. Logan via certified mail and that the approved method
7 be ruled as satisfying the service requirements of this case.

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9 **References**

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11 [1] Texas rules of civil procedure. <http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf>.

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15 Dated: May 7, 2018

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18 Paul R. F. Schumacher

19 Plaintiff (Pro Se)

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21 CERTIFICATE OF SERVICE I HEREBY CERTIFY that on May 7, 2018, a true and

22 correct copy of the foregoing was submitted electronically to the Clerk of Court, which will

23 serve copies to all counsel and parties of record registered to receive CM/ECF notification.